



INTERIOR BOARD OF INDIAN APPEALS

Charles D. Carufel, Sr. v. Midwest Regional Director, Bureau of Indian Affairs

49 IBIA 282 (06/19/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CHARLES D. CARUFEL, SR.,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 09-104
MIDWEST REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	June 19, 2009

On June 8, 2009, the Board of Indian Appeals (Board) received a notice of appeal from Charles D. Carufel, Sr. (Appellant), seeking review of an April 28, 2009, decision (Decision) of the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA). In response to an appeal filed by Appellant, the Decision vacated a January 5, 2006, decision by the Great Lakes Agency Superintendent (Superintendent), BIA, to cancel Residential Lease No. RL-3345(00) (Lease), between the Lac du Flambeau Band of Chippewa Indians (Tribe) and Appellant, based on Appellant's failure to comply with the terms of the Lease.¹ The Regional Director concluded that proper procedures were not followed for cancelling the Lease, and therefore he vacated the Superintendent's decision and remanded the matter for compliance with the regulations.

We docket this appeal, but dismiss it for lack of standing because Appellant was not adversely affected by the Regional Director's decision. Even assuming Appellant could show standing, we would dismiss because the matter is not ripe for Board review.

In order to have standing, an appellant must be an interested party whose interests could be adversely affected by the decision being appealed. *See* 25 C.F.R. § 2.2 (definitions of "Appellant" and "Interested Party"); 43 C.F.R. § 4.331 (Who may appeal). Instead of adversely affecting Appellant, the Decision held in Appellant's favor by finding that the manner in which the Superintendent issued the lease cancellation decision had violated Appellant's due process rights, as prescribed by the regulations. The relief granted was also favorable to Appellant: the Regional Director vacated (i.e., nullified) the Superintendent's decision to cancel the Lease.

¹ According to the Decision, the purpose of the Lease was for the construction of a home, and the Tribe sought cancellation of the Lease on the grounds that Appellant had failed to comply with a lease provision requiring him to complete construction within five years.

Appellant’s concern appears to be that in vacating the Superintendent’s decision and remanding the matter, the Decision states that the notice of violation and initiation of lease cancellation proceedings “must be reissued in accordance with 25 CFR [Part] 162 and 25 CFR [Part] 2,” and, on remand, the Superintendent issued a new notice to Appellant.² Decision at 5. But in stating that a new notice must be reissued in accordance with the regulations, the Decision did not decide that the Lease should be cancelled — only that the regulations must be followed. As such, the Decision’s directive did not adversely affect Appellant’s leasehold interest. Rather, it restored the status quo to what it was prior to the Superintendent’s January 5, 2006, decision.

Even if Appellant could demonstrate standing, we would nevertheless dismiss this appeal because it is not ripe for Board review. The Decision found that the Superintendent had failed to comply with various regulatory due process requirements before cancelling the Lease. Even if the result of the proceedings reinitiated by the Superintendent is cancellation of the Lease, Appellant will have another right of appeal to the Regional Director, who may fully consider any legal arguments or factual assertions Appellant may wish to make. And if the matter does return to the Board following another decision by the Regional Director, we will have the benefit of a fully developed administrative record on which to issue a decision. Thus, even if Appellant could satisfy the threshold requirement to show standing, we would still dismiss this appeal for lack of ripeness. *See Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1 (2006) (dismissing appeal for lack of ripeness).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed but dismisses this appeal.

I concur:

 // original signed
Steven K. Linscheid
Chief Administrative Judge

 // original signed
Debora G. Luther
Administrative Judge

² In an undated letter that Appellant states he received on May 21, 2009, the Superintendent issued a new notice that lease cancellation proceedings were being initiated due to Appellant’s non-compliance with the Lease. The Superintendent’s letter advised Appellant that he had 10 business days to cure the alleged default, dispute the violation, or otherwise explain why the Lease should not be cancelled. Appellant responded to the Superintendent by letter dated May 29, 2009.